

## MAX HUBER

1874-1960

*At the time of Max Huber's death, the Revue internationale paid a succession of moving tributes to someone who had given so much of himself to the Red Cross cause.<sup>1</sup> His work as a thinker, jurist and man of action, first as a member, then as President and Honorary President of the ICRC, has been evoked. Reference will also shortly be made to this when we publish other contributions concerning personalities belonging to our movement.*

*We have great pleasure in being able to publish this study on Max Huber's juridical activities outside the Red Cross. One can thus have a better picture of the whole man, his sweeping and productive intelligence, the continuous interest which he gave to problems of international conduct, and his struggle to ensure that human dignity was everywhere and at all times defended. And one can see even more clearly how his thought evolved, the deep forces to which it reacted and how he harmoniously combined love of his own country with that of mankind.*

*Professor Guggenheim, who was one of his friends, has kindly allowed us to publish this appraisal, for which we warmly thank him.* (Editorial note).

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### I

With the death on New Year's Day 1960 of Max Huber, who two days previously had reached the age of eighty-six, Switzerland lost one of her most outstanding exponents of international law since Emer de Vattel. He was given an impressive funeral in the Fraumünster in Zurich at which, in accordance with his last wishes, the parish priest delivered the oration and this was followed by a tribute by Mr. Max Petitpierre, President of the Confederation, to the way in which he had always placed his country's interests before his own.

<sup>1</sup> See *Revue internationale*, January, February, 1960.

There were many facets to Huber's personality and he possessed considerable charm. In spite of an innate reticence, he excelled in the art of establishing human relationships to such an extent that those who had dealings with him were convinced that their own problems were also of all importance to him. At all events and as he always maintained, he considered himself to be a jurist first and foremost, believing that, in legal matters, the law of nations and above all international relations were of far greater importance than intellectual speculations. Although throughout his long life he interested himself in many different problems, social, economic, historical and religious, and his thoughts underwent a gradual evolution, public international law remained for him the centre of attraction. On leaving school he became so imbued with the humanist traditions of international law that he saw that the goal for which he would strive throughout his life would be the regulation of international peace. He often said what a lifelong influence Bertha von Suttner's book (*Die Waffen nieder!*) (No More Weapons) had had on him, as had above all the close friendship between his own family and that of the son of Johann Caspar Bluntschli, author of a standard handbook on International Law in the second half of the Nineteenth Century.

We know these facts from Fritz Wartenweiler's excellent biography<sup>1</sup> and also from the autobiographical notes of a journal which he kept regularly at the most decisive moments of his life. This had been done at Bluntschli's instigation, with whom he had many other traits in common (both came from old Zurich families) and this greatly facilitated the work of his biographers<sup>2</sup>. In these notes he describes in detail his own development and the successive stages of his career in the light of the history of his time. In the same way as Bluntschli he noted down with exactitude events both great and small in which he had taken part and the effect that these had had in the development of his own character. Unlike his predecessor, however, when analysing his enormous activity he does not allow the least expression of self-satisfaction to creep

<sup>1</sup> Rotapfel Publishers, Zurich, 1958.

<sup>2</sup> This applied especially to the fourth volume of his miscellaneous essays (*Rückblick und Ausblick*), which contain a series of autobiographical notes. Cf. his own biography, *Schweizer Köpfe*, 1940.

in, neither is there any trace of enviable satisfaction with himself and with his own work which Georg Jellinek so rightly remarked upon, on the occasion of Bluntschli's hundredth birthday, as being a characteristic trait of this famous and distinguished Swiss, who ended his scholarly career at Heidelberg <sup>1</sup>.

Max Huber had, like many other jurists who were given to self-criticism, an insatiable urge to widen his knowledge. No sooner had he put pen to paper or expressed his views aloud on some subject, than he had a feeling of dissatisfaction. However, like his great predecessor, Huber was always driven by the urgency of a tremendous activity. From his youth onwards until the very last days of his life, the motive force which drove him to realize practical projects was linked with a desire to perfect his theoretical knowledge. He was not one of those detached seekers, since he wanted to be in and of the world. What is significant is that, with all his intrinsic gifts which could have made a doctor or theologian of him, he chose without any hesitation, after finishing his classical studies at the Zurich Cantonal College, to devote himself to the study of law with a view to preparing himself for a political career.

Three university professors exercised a decisive influence on Max Huber. First of all there was Hermann Ferdinand Hitzig (1868-1911) of Zurich, who initiated him into the history of Roman law in a far different spirit from that which was prevalent at the time, especially in the way in which the Pandects were being taught and which exactly suited his own development. Huber had always in fact wanted to study the relationship and the lives of communities which were working out their own systems of legal order and this from the very outset of his career led him towards sociological problems which at that time were only beginning to be studied. Then in the atmosphere of Berlin, at the end of the century in which several outstanding personalities of the post-Bismarck era had chairs in the Faculty of Law, he came under the influence of two leading figures. Chief amongst these was Otto von Gierke, the famous law historian under whose guidance he made a remarkable study of institutions in the Swiss cantons from their origins, which was published in a collection of legal studies on the history of

<sup>1</sup> Cf. Georg Jellinek : Johann Caspar Bluntschli in *Ausgewählte Schriften und Reden*, 1911, vol. I, p. 284 et seq.

German law edited by Gierke<sup>1</sup>. This monograph could have been accepted as his doctor's thesis. The other leading professor at the University of Berlin, Bernhard Hübner, also exercised a considerable influence over him. Full of originality and possessing a many-sided personality, unlike Gierke, he was noted for the liveliness with which he gave his classes. Apart from a slight article on international magistrates, which was a preliminary study of the international organization, Hübner produced no other literary work. As a highly placed government official during the Falk era when Bismarck was in power, he had taken part in the "Kulturkampf", the campaign against the Catholic Church. After the Iron Chancellor had modified his policy he resigned from the Ministry of Education and assumed a chair at the Berlin Faculty of Law. Hübner had persuaded Max Huber to choose as his thesis one which would lead him eventually to a career in international law, when in point of fact he would have preferred to have submitted a thesis on the relationship between the jurisdiction of arbitration and the first Hague Conference. He was, however, dissuaded from doing this and Hübner advised his pupil to make his subject instead the succession of States, which would offer him such wide opportunities. In fact at that time, apart from a few excellent monographs mostly French or Italian, the field of study which was opened up by the political climate of the Nineteenth Century towards this subject was as yet entirely unexplored.

The chief merit of Huber's work lies in his strikingly accurate analysis of the practice of international law and especially of the international Conventions of the Nineteenth Century. From the theoretical point of view, Otto von Gierke's ideas, which were moreover very debatable and have since been generally discarded, concerning the development and the end of corporations, were in fact the origins of Huber's "Theory of the Succession of States from the Social Angle"<sup>2</sup>. This youthful work, which was so full of

<sup>1</sup> « *Die Gemeindenschaften der Schweiz, auf Grund der Quellen dargestellt* », Breslau, 1897.

<sup>2</sup> Cf. Gierke: *Die Genossenschafts-Theorie und die deutsche Rechtssprechung*, 1887, p. 859 et seq. A detailed criticism of Max Huber's thesis was included in Guggenheim: *Beiträge zur völkerrechtlichen Lehre vom Staatenwechsel*, 1925, p. 35 et seq. (*Contributions to the doctrine of international law in the succession of States*), also a thesis accepted by the Law Faculty of the University of Berlin.

promise, attracted general attention and has often been quoted for its comprehensive documentation. Although the Faculty of Law which was called upon to make a pronouncement found certain flaws in his thesis, nevertheless he was awarded the rare distinction in Berlin of being mentioned "summa cum laude" chiefly on account of an excellent oral examination and for the work which he had carried out with such diligence and understanding on the practical problems involved in the succession of States.

## II

A good illustration of Max Huber's tendencies at that time can be seen by the fact that no sooner had he so brilliantly completed his studies in Berlin than he turned all his energy into practical activities. Interesting himself in Swiss commercial and industrial expansion, he then undertook a long journey round the world, of which he gives an account in his journal (1906). His scholastic and literary activity dates only from his almost fortuitous nomination to the chair of public law at the University of Zurich. Walter Schücking, who had originally been nominated in order to fill the vacancy on Gustave Vogt's death in 1901, had declined to accept the appointment in view of its poor remuneration. The State Council, chiefly on Hitzig's insistence, then called upon Huber. At that time he was preparing himself for diplomacy and, as he afterwards admitted, he would never have embarked on an *academic career if Schücking, Professor Extraordinary at Breslau*, and with whom he was to be associated later, had accepted the Zurich professorship <sup>1</sup>.

<sup>1</sup> Huber first obtained the "venia legendi" as a lecturer (1902). In the following year he was appointed professor extraordinary and titular professor in 1914. On resigning his appointments in 1921, he became honorary professor. Referring to his academic activities, in which he was chiefly associated with Jacob Schollenberger (who had formerly been in the cantonal administration and who was a profound thinker who has since been somewhat neglected), Gagliardi wrote in *The University of Zurich, 1833-1933* (published in 1938): "Apart from the study of public law (both Swiss and general), of ecclesiastical law, and of the specialized law of waterways, more and more importance was attached to public international law at lectures and study periods." As regards the question of the Zurich professorship offered to Schücking, see Max Huber: Walter Schücking und die Völkerrechtswissenschaft, *Die Friedens-Warte*, year XXXV, 1935.

Huber was often to complain later that he had only become a university professor by chance. He did not feel that he was in any way suited for such a calling for which he had not prepared himself sufficiently. This self-criticism was only partly justified. According to many students and in spite of the fact that he had little taste for routine teaching and that he had a natural shyness, which he was never able completely to overcome, he exercised a most stimulating influence, especially during conferences and courses, over the most gifted students and those who showed particular interest in law. As a result, it could also be seen clearly that under his direction the University of Zurich produced a whole series of most impressive theses on international law. This had certainly not been the case before his time nor was it so immediately after he left the University.

The astounding energy which he showed between the beginning of his academic career and the time when his practical activity in the field of international law was to absorb him more and more, was truly remarkable for the number of studies which he published. In his inaugural address, which was full of original ideas on the stages in the development of the notion of the State<sup>1</sup>, as in his thesis "The Succession of States", Gierke's influence could clearly be seen. He attempted to establish a typology of subjects in public law and to explain their intrinsic relationships with each other, in order above all to prove that from the legal point of view the transformation from federation to unification of a State was inadmissible. As far as I am aware, this address was little remarked upon by his audience, no doubt on account of its somewhat theoretical and unco-ordinated character<sup>2</sup>. This did, however, serve as the theme for two monographs which laid the foundation of Max Huber's reputation, namely his study on the sociological basis of the law of nations and the international community, which appeared in the *Year Book on Public Law* in 1910, and his report on the equality of States, which is complementary to that study and which can be found in the commemorative pamphlet published by foreign lawyers in honour of Joseph Kohler's sixtieth birthday (1909).

<sup>1</sup> *Swiss Law Review*, N. F. Vol. 23, 1904.

<sup>2</sup> Note however the controversial nature of G. Jellinek's observations: *Allgemeine Staatslehre*, 3rd Ed., 1914, p. 783, yearbook 2.

To what can one attribute the fundamental depth and variety in the writings of this Zurich scholar? It seems to me that four factors were involved. In the first place, on reaching his thirties he had attained a certain maturity of spirit which, combined with his highly receptive capabilities and his facility to assimilate other people's ideas, gave Huber the strength to shape and to concentrate his own thoughts. His suppleness and the clear way in which he expressed himself in well-constructed sentences greatly helped the marshalling of newly acquired ideas which he set out in an original manner.

Furthermore, it is essential to realize the importance of an experience which Huber underwent at the age of thirty-two. New horizons opened out before him when, at the instigation of Ludwig Forrer, President of the Confederation, he took part as third Swiss delegate in the Second Hague Peace Conference. This in fact gave him the opportunity of submitting his well-known draft "optional clause" relating to the Court's obligatory jurisdiction which we shall come across later, but which was unacceptable at the time. He was also the better able to appreciate the political conditions in which that international organization operated as well as the rôle of the great Powers in the community of States. He was later to follow up these observations in the two treaties which have been mentioned above.

Huber came under yet another influence: that of the theory of sociology. He noted the permanent reciprocal interchanges which exist between legal and sociological elements, asserting that "in fundamental legal concepts such for example as the family, property, the authority of the State, communities, legal and sociological elements are constantly interacting on each other and are so indissolubly linked through their mutual relationship that jurisprudence as a technique... is the best source of law"<sup>1</sup>. Franz Oppenheimer's Study on the State and his economic doctrine enabled him to see more clearly the relations which exist between the State and the economy.

Finally, Huber's high opinion of tradition as a factor of social importance gave him an appreciation of the rôle of general history,

<sup>1</sup> "Beiträge zur Kenntnis der soziologischen Grundlagen", *Public Law Year-Book*, 1910, p. 61.



particularly from the diplomatic point of view, in establishing political principles and in interpreting the rules of public international law. The legal training which he had received in Berlin was of considerable assistance to him in reaching these conclusions.

The strength of these publications, in which the origins of his own inspiration and the methods of his future work were demonstrated, lay less in their reasoned presentation, the finesse of their legal exposition or in the originality of their doctrine, than in his thoroughly original conception of public international law. This, he regarded from the functional or rather the political angle. The introduction of this method, which extended far beyond the German language frontiers, was his great achievement which was unrivalled and in many respects unique. This was later to have considerable results. A short time ago Charles de Visscher, former judge of the International Court of Justice, acknowledged him as his master and the chief exponent of this method by dedicating the first edition of his book *Theory and Reality in International Law* (1953) to Max Huber.

The "Sociological Principles" were above all recognized by Georg Jellinek, a leading figure in public law, whose influence was also felt outside the German-speaking countries and who towards the end of his life abandoned Paul Laband's legal methods, to which he had adhered in his youthful publications, in order to turn towards a sociological and political concept of the teaching of public law. After Jellinek's unexpected death, on 12th January 1911, Laband and Piloti invited Huber to join the editorial board of the *Public Law Year Book*, which was the most highly considered publication on the subject in the German-speaking countries. To this he had already contributed a valuable study on the sociological foundations of public international law as well as a very well documented essay which attracted considerable attention on arbitration procedure and the laws and customs of land warfare, following on the Second Hague Peace Conference of 1907. This essay was to a certain extent a critical summary of the results of that international meeting. Huber worked as co-editor of the *Year Book* until the outbreak of war in 1914. He then considered, no doubt with some justification, that such activities were incompatible with the new responsibilities which had been entrusted to him by the Swiss Confederation and he resigned from his post.



Apart from occasional articles, his principal activities during the years immediately preceding the world war, consisted of two tasks. In the first place, the Swiss Federal Council had instructed him to make preparations for the Third Hague Peace Conference which was due to take place in 1915, and secondly he wrote a comprehensive article on the international laws of war for Stier-Sombo's manual of public international law. This, however, only remained in manuscript form since he thought that such a work could no longer be considered sufficiently up-to-date in view of the revolutionary changes which were then taking place in the techniques of warfare and in the laws of war. Unfortunately, after the war he found no time to revise his manuscript, although he generously placed it at my disposal when I was preparing the chapter on the laws of war in my treatise on public international law<sup>1</sup>. This was a considerable help to me and I always regretted that this work, which was written in such a fluent style and in which the subject matter was dealt with in such a personal manner, had not been made available to a wider public<sup>2</sup>.

### III

During the 1914-1918 War his activities were to undergo a radical change.

In his preparatory work for the third Peace Conference, Max Huber had very close relations with the Political Department and these were to continue throughout the war years. He produced a large number of expert reports which dealt chiefly with such questions as the rules of war and neutrality. These widely assorted documents are at present in the federal archives awaiting publication in the collection being prepared under the direction of the Political Department. From a consulting rôle Huber was to co-operate on a regular basis when he became permanent adviser to the Swiss

<sup>1</sup> Cf. *Traité de droit international public*, vol. II, 1954, p. 304 and note 2, p. 303.

<sup>2</sup> During this period (1914) the "Swiss Society for International Law" was founded on Max Huber's initiative and of which he became the first president. Cf. H. Fritzsché, *Die Schweizerische Vereinigung für Internationales Recht (1914-1944)*, Tribute to Max Huber, 1944.

Government in all matters relating to the international organization which was then in process of realization. He owed his nomination to this post to Federal Councillor Felix Calonder, with whom he had close ties of friendship and was able to triumph over a certain amount of initial opposition on the part of some of his colleagues on the Federal Council<sup>1</sup>. It was then that Huber showed all the tact and political acumen of which he was capable. Whilst he perfectly understood the new political climate, he also realized very clearly the necessity for combining the past, the present and the future. He never forgot Switzerland's interests. He was also fortunate in finding in Felix Calonder, then head of the Political Department, who had for a long time been trained in the science of international law, a chief lacking in any form of jealousy, who made him take a leading position in the political field, who encouraged him unreservedly and who supported his colleague with the full weight of his own authority<sup>2</sup>.

During the summer of 1918, Huber began work on a memorandum of some importance on the "Problems of the League of Nations" which the Political Department submitted to the Federal Council. This work was to serve as a basis for the deliberations of an expert committee presided over by Calonder and on which Huber was rapporteur. In spite of the sharp opposition, in particular from the Federal Judge Merz, the committee drew up a Swiss draft agreement with the object of forming a League of Nations, making neutrality an essential element of the international organization, which, in my own opinion, was debatable. In spite of this, however, the Swiss draft for a League of Nations—

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<sup>1</sup> See Max Huber, *Koexistenz und Gemeinschaft, Völkerrechtliche Erinnerungen aus sechs Jahrzehnten*, *Swiss Year Book of International Law*, 1955, vol. XII and in particular p. 19 et seq.

<sup>2</sup> In the *Annuaire suisse de Droit international* (Swiss Year Book of International Law), vol. IX, 1952, p. 7 and following, Max Huber wrote a moving obituary notice of Calonder, which was republished later in his "Essays and Collected Speeches" (*Rückblick und Ausblick*, 1957, p. 411 et seq.). At the end he made this apposite appraisal: "In Calonder, Switzerland possessed not only a remarkable statesman, but also an equally outstanding exponent of public international law. All those who had had the privilege of working with Calonder and had had human or professional dealings with him also knew him as a man of complete integrity who had always been animated by a spirit of inflexible justice and had to the highest degree a consciousness of his own responsibilities."

which in fact exercised no influence whatsoever on historical events nor above all on the draft Covenant of the League of Nations which was formulated at the Paris Peace Conference—is a document of which too little notice was taken at the time. It contains in fact the guiding principles of our foreign policy relative to Switzerland's participation in the international political organization and it is for that reason, thanks to its constructive character, that it has lost none of its topicality.

This work was soon to be followed by the famous message of the 4th of August 1919, in which Switzerland was to assume membership of the League of Nations. This message on the one hand fulfilled Calonder's hopes in its very objective exposition of the arguments in favour of and against accession to the Covenant. (In this respect, Huber had faithfully followed the instructions of the chief of the Political Department.) On the other hand, however, it contained—and this was rare in a document of such a kind—extremely profound political reflections in which the imprint of his "Sociological Principles" and his study on the "Equality of States" was clearly revealed. The question of the political organization of the League of Nations is here placed in a wide historical and political context and its various facets, such as the prevention of war, the solution of political and legal disputes and the disarmament programme, are all treated in such a manner that they appear as apposite today as when the message was originally delivered. The profound historical sense, the interpretation of the Covenant of the League of Nations, which, in the absence of any sort of practical experience, required a considerable amount of political imagination, and the seriousness with which political considerations were balanced were allied in this document with elements of a moral and metaphysical nature.

As a result of his participation in the work of the Political Department, Huber found himself being associated with the negotiations for Switzerland's entry into the League of Nations. From March 1919 it fell to him, in co-operation chiefly with the Federal Councillors Calonder and Ador and Professor W. E. Rappard, to find a formula which could reconcile such a decision with the maintenance of neutrality. The basic argument which was used was that Switzerland, having abrogated its occupation rights in

Haute Savoie and by renewing Switzerland's perpetual neutrality, which had been established on November 20, 1815, article 435 of the Versailles Peace Treaty, made of this perpetual neutrality one of these "international obligations for the maintenance of peace" which are in accordance with article 21 of the Covenant of the League of Nations<sup>1</sup>. On this basis it then became possible to obtain the famous London declaration of the League of Nations Council of February 13, 1920, which entailed the task for Max Huber of clarifying with Professor van Hamel of the Netherlands, Chief of the Legal Section of the League of Nations, the implications of this perpetual neutrality in the light of military action which might take place within the framework of the League of Nations through the Covenant's provisions for collective security which had just been agreed.

The declaration to which these conversations had led has now become part of the history of the law of Swiss neutrality as defined in Huber's own terms, which, in my opinion, are not entirely conclusive but which are nevertheless attractive, of "differential neutrality" or rather of the "differential status of neutrality". The idea was that whilst Switzerland should participate in certain activities, including those of an economic character, in the interest of collective security, she should, however, uphold everything which constitutes the essentials of the status of neutrality by abstaining from any sort of military participation in intervention by the League of Nations against a State recognized as having been guilty of aggression.

Such a procedure, whose value within the legal framework of the League of Nations was indeed problematical, was not able to be put into practice. Furthermore, the chance of achieving a rapid realization of the system of collective security had been over-estimated<sup>2</sup>. Huber, however, had always defended the policy which was carried out at the time and in which he partici-

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<sup>1</sup> The recognition of neutrality as "international obligations for the maintenance of peace" mentioned in article 435 of the Peace Treaty of Versailles as well as the Resolution of the Council of the League of Nations of February 13, 1920 was probably formulated by Huber. See Wartenweiler where mentioned, p. 118.

<sup>2</sup> See Guggenheim: *Traité de droit international public*, vol. II, 1954, p. 265 et seq., 558.

pated in such an outstanding manner. In his fine funeral oration for Calonder, he expressed himself in these terms : " Such a policy enables our country to adopt an attitude which the present head of our foreign policy has described as ' neutrality and solidarity ', which may appear to be paradoxical but is in fact the only formula which conforms to historical facts and to the political and ethical traditions of our country " <sup>1</sup>. And in his private notes, of which only extracts have been published, can be found this particularly important observation on the Resolution of the League of Nations Council of February 13, 1920 :

" Reflecting on the situation before going to sleep, I felt a certain exaltation about how I had taken no small part in a European political act, according a special position for my country, which I hope will not be to its disadvantage, within the organization of States and giving recognition to the state of perpetual neutrality. By so doing, this state, which had become somewhat discredited towards the end of the war, was thus shown to be of interest to the whole of Europe. But I also felt a considerable amount of responsibility since this particular form of neutrality which had been agreed upon by the League of Nations, also involved certain risks. By accepting the London declaration, Switzerland had embarked on a stage on which she had not ventured for a long time. In other words, she was to participate, admittedly in a restricted manner but in one which was nevertheless of importance to her, in the graduated system whose object was the collective maintenance of peace. In so far as this system shows itself to be effective and conscientiously applied, no sacrifice can be too great and any reservations which Switzerland may make or any demands which she may exact with the object of making profit out of abnormal conditions would be difficult to justify. But if this system, which has been established in order to safeguard peace, does not inspire confidence and were to serve as an instrument to further the interests of the Powers, then Switzerland will be seen to have committed herself too far. For that very reason this has been a compromise solution, although a necessary one and as such it is entirely satisfactory " <sup>2</sup>.

Besides, Max Huber was always to hold the opinion that Switzerland should try to return to an integral form of neutrality ; although he did not take this view into account in his works which dealt with the problem of Swiss neutrality <sup>3</sup>, but he acted in this sense when the so-called Blockade Commission of the League of

<sup>1</sup> See Max Huber : " Vermischte Schriften ", vol. IV, *Rückblick und Ausblick*, p. 418.

<sup>2</sup> See Wartenweiler, *op. cit.*, p. 122.

<sup>3</sup> See especially : " La Suisse et la Société des Nations ", in *l'Origine et l'œuvre de la Société des Nations*, vol. II, p. 68 et seq. Copenhagen, 1924.

Nations interpreted the use of sanctions within the framework of article 16 of the League of Nations Covenant. The third Commission of the Second Assembly of the League of Nations<sup>1</sup> followed up this interpretation by stating that an *act of war* would not automatically lead to a *state of war* and that in consequence a member State could not be obliged automatically to participate in sanctions on a decision made by one of the political organs of the League of Nations. Thus to abandon neutrality, at least theoretically, was left to the free choice of the member States of the League of Nations.

This opinion of Huber's was to be given fresh encouragement by a Federal Council report, which he had himself drafted, of December 11, 1919<sup>2</sup>, by which Switzerland's active participation in the implementation of arbitral jurisdiction in all its forms is in fact only applicable to conflicts which have legal implications or which depend upon judicial decisions. The German-Swiss Convention relative to arbitral and conciliatory jurisdiction is based upon this opinion, the text of which was drawn up with Huber's help and which constitutes a veritable model agreement. This agreement was to be followed by a number of arbitral and conciliatory conventions agreed to by Switzerland, in which he took no part and which differ in certain respects from his original idea. The report can be regarded as being complementary to the message of 1919 since it partly renewed those ideas which the Swiss draft of the League of Nations had attempted to put into effect. Huber had underlined in this report the importance of conciliation without political bias, thus laying the foundation of that most useful procedure which he himself described as "an issue enabling one to give ground without abandoning one's principles". On one of the rare occasions on which a session of the conciliation commission took place and which Huber presided, he was able to give a trial to the instrument which he had himself helped to create. He was President of the conciliation commission in 1934 which was engaged in settling the Belgo-Luxemburg dispute arising

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<sup>1</sup> See Schücking and Wehberg: *Die Satzung des Völkerbundes*, 2nd ed. 1924, p. 608 and following. Guggenheim: *Der Völkerbund*, 1932, p. 148 and following.

<sup>2</sup> *Bundes-Blatt*, 1919, vol. V, p. 925 et seq.

out of the smuggling of spirits from Luxemburg into Belgium. He was fully satisfied with its results, since he remained convinced that conciliatory procedure was applied only too rarely in the practice of international law.

Max Huber's participation in the League of Nations' preparatory work and in the arbitral procedure which had recently been started won the confidence of the Federal Councillor Motta, who had succeeded Calonder as head of the Political Department<sup>1</sup>. As Motta's adviser and as a Swiss delegate, Huber took part in the first Assembly of the League of Nations, during which he successfully proposed the famous compromise which was subsequently to become so important on the recognition of obligatory jurisdiction. This was the provision of the Court's Statute (art. 36, para. 2, which laid down that member States could, in the regulation of disputes of a *judicial character* and under reserve of reciprocity, declare that they would accept to be summoned to appear before the High Court of Justice at The Hague by another member State which had also acceded to the optional clause recognizing obligatory jurisdiction<sup>2</sup>.

But before this, Huber had written a unique study of some importance on the international *political organization*, dealing with the constructive principles in the League of Nations Covenant, which were based on a communication of December 15, 1919, made to the Society of Berne Lawyers<sup>3</sup>. Once again, as in his "Sociological Principles" and the "Equality of States", Huber's politico-social theory was revealed in all its quality. In this he gives due prominence to each element lying at the foundation of the League of Nations Covenant: to the interplay of political forces

<sup>1</sup> For a description of Motta's early activities as head of the Political Department, see Max Huber, *Rückblick und Ausblick*, 1957, p. 427 et seq.

<sup>2</sup> See especially Guggenheim: *Traité de droit international public*, 1954, vol. II, p. 120, note 2, in which more details are given concerning the circumstances surrounding the draft which Max Huber had already submitted to the Second Peace Conference of The Hague.

See also Guggenheim: "Der sogenannte automatische Vorbehalt der inneren Angelegenheiten gegenüber der Anerkennung der obligatorischen Gerichtsbarkeit des internationalen Gerichtshofes in seiner neuesten Gerichtspraxis." *Tribute to Alfred Verdross*, 1960, p. 119 et seq.

<sup>3</sup> *Zeitschrift für Völkerrecht*, vol. XII, also mentioned in Huber: "Vermischte Schriften", vol. III, p. 197 et seq.



at the end of the First World War which, by leaning on traditional rules, accounted for the introduction of extremely daring innovations, thanks chiefly to concerted Anglo-American action, and led to plans for setting up an international peace organization in so far as they "aimed at realizable objectives based on war-time experience with the courage to make radical innovations which had hitherto been considered unrealizable."

## IV

On 14th September 1921, Max Huber, who was in his 47th year, was appointed, after much balloting in the Assembly and in the Council of the League of Nations, to the eleventh and last seat on the Permanent Court of International Justice which had just been established : a record for a man of his age which has not since been repeated. It was to be the beginning of a particularly active but short period for him since it only lasted nine years and which he was himself to cut short when he resigned from the Court. He thus strangely restricted himself in participating in the drawing up of the International Law of Peace. Since then in fact he limited himself to giving occasional advice, to participation in the Twelfth Assembly of the League of Nations (1931) and in the Disarmament Conference at Geneva, and also in working with the Institute of International Law. His position as a magistrate developed in him to the highest degree all the additional aptitudes of which he was already possessed, such as the ability to get to the heart of documents, an intimate knowledge of legal problems, remarkable judgment and last but not least, the realization of the need, in spite of the hard matter-of-fact considerations, for contributing to the building up of a community devoted to peace without ever losing sight of humanitarian as well as of constructive objectives connected with public international law. It was not always easy for Max Huber to agree with the collegiate views of the judges and he found himself obliged on several occasions to avail himself of the right to vote independently, thus voicing opinions which were considered to be dissident and highly individual. This he did on one occasion together with his Italian friend and colleague,

Professor Dionisio Anzilotti, whose character differed so greatly from his own. This occurred during the well-known case of the *S/S Wimbledon*: the two judges would have preferred to have upheld the customary law of neutrals in opposition to the law of neutrals as defined by the restrictive legal clauses of the Versailles Peace Treaty <sup>1</sup>.

It has not yet been possible to gain access to documents relating to the work of the Permanent Court of International Justice in which Huber took part. His contribution to the revision of the Court's Rules, which has been published, however, does give an idea of how far he had gone in establishing a procedure of international law untrammelled by restrictions. Furthermore, certain of his opinions, for example the advice which he gave the Court in the Mosul case (series B, No. 12) so well reflect his own basic political views on the very essence of the equality of States and of international jurisdiction that it is not difficult to be made aware of the active part which he himself had taken in these deliberations.

But Max Huber had an opportunity of showing his consummate skill even more clearly in matters of jurisprudence when he was given the exceptional honour of acting as sole arbitrator on two occasions during his magistrature at The Hague. The first of these cases (1923/24) was the award, which was accepted by the two parties concerned, namely the British and the Spanish Governments, of compensation for damage to British property made against Spain in Spanish Morocco <sup>2</sup>. From two points of view the meaning of this arbitral award goes further than the limits of the litigation itself. Firstly by its definition of the original motives for the dispute which had been submitted to arbitral jurisdiction, a question still ill-defined when the award was made, and secondly, because it made a profound analysis of certain special problems concerning international responsibility and above all in the way it made a differentiation in the responsibilities of State organs, especially when dealing with revolutionary situations in the underdeveloped countries.

<sup>1</sup> Permanent Court of International Justice, Series A, No. 1, p. 35 et seq.

<sup>2</sup> Case of British property in Spanish Morocco, arbitral award of 1st of May, 1925, *Reports of international arbitral awards by the United Nations*, vol. II, p. 615 et seq.

The award which was made in the "Island of Palmas Case" in a dispute in which the United States was opposed to the Netherlands, had perhaps an even greater influence on the evolution of public international law<sup>1</sup>. This award was also made by the Permanent Court of Arbitration at The Hague, of which Max Huber was also a member for many years (1922 to 1951) and which established important principles in connection with territorial prerogatives. These principles could not only be regarded as being important precedents for future arbitral and judicial decisions, since the award made in the Island of Palmas case also considerably strengthened the probative procedure, a procedure which had not been studied to any considerable extent. In fact, the probative rules which had been developed by Huber greatly influenced the judicial procedure of the International Court of Justice after the Second World War.

The rôle of sole arbitrator particularly suited Max Huber, although he was not entirely satisfied with his collegiate activity at the Permanent Court of International Justice. According to him he was not able to give free rein there to his creative temperament and in spite of the confidence which had been placed in him by his colleagues who had entrusted him with the presidency of the Court in 1924 for three years, he never felt entirely in his element. His chief regret was that the member States and the political bodies of the League of Nations had not assigned to the Court of Justice a sufficient number of important political problems and that consequently the Court had been merely reduced to interpreting treaty rights in international law. Max Huber realized, however, during the course of private discussions, that it had been a wise decision not to submit to the Court, at the beginning of his term of office, judicial problems which would probably have been too difficult or too complex to resolve on account of the lack of homogeneity which existed in the composition of the Permanent Court of International Justice. He was consequently considerably relieved when Belgium's complaint against China on the question of maintaining the 1866 agreement on capitulations which had

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<sup>1</sup> Arbitral award in April 1928. *Reports of arbitral awards of the United Nations*, Vol. II, p. 829 et seq.

been unilaterally denounced by China was withdrawn, thus enabling him to abandon the provisional measures which he had made in favour of Belgium<sup>1</sup> and which had weighed heavily on his conscience. He considered that it was not for the Court of Justice to discuss the effect of the clause "*rebus sic stantibus*", nor the conditions for applying this clause on the basis of international custom. He was in fact of the opinion, as he informed me, that such "climbing up the slopes of Mont-Blanc" in matters of public international law was premature for the jurisdiction of the law of nations.

Max Huber therefore declined to accept the renewal of his mandate as judge in 1930, in order to devote himself to the humanitarian ideas of the Red Cross, which were to occupy him more and more. These ideas were also to lead this famous jurist and international judge in the direction of moral rearmament and the oecumenical Church movement.

This abandonment of international law properly speaking had several results. For the Court of Justice itself the departure of this intelligent and independent jurist who had always directed his efforts to the setting up of an exemplary judicial procedure was a considerable loss. Furthermore, his resignation had the effect of isolating one of the most eminent judges of the inter-war period, D. Anzilotti, who had been mainly supported by Max Huber, and who had succeeded in giving due attention to the drafting of the remarkable and detailed reports, so characteristic of the Court's first period of activity (1921-1930), as satisfactory in international law as has been the application of the State Council's procedure for the future of administrative law in France. During the second period of the Permanent Court of International Justice (1931-40), Anzilotti was forced into opposition and expressed himself by a number of dissenting and individual opinions which were moreover always remarkable.

## V

Although he showed more reservation after leaving the Permanent Court of International Justice, Huber continued to interest

<sup>1</sup> Unilateral denunciation of the Capitulations in China. Permanent Court of International Justice, Series A, Nos. 8, 14 and 16.

himself in public international law in his new activities as a president of the International Committee of the Red Cross. He contributed to the progress of the Law of Nations by taking more and more part in the work of the *Institute of International Law*, of which he had been a member since 1921 and an honorary member since 1950—which was a rare distinction—by propagating above all the idea which he had had during his work with the Red Cross that it is necessary to protect the rights of individuals out of respect for their dignity as well as ensuring for them a minimum standard of humane treatment, as guaranteed by international law. He had only *once* acted in the capacity of rapporteur with the Institute of International Law, in connection, it is true to say, with an extremely important matter, since it was a question of evading political pressure in the appointment of the Court judges and of preparing amendments to the statutes of that Court<sup>1</sup>. He had often had, however, to intervene as a member of a Commission in written discussions on his colleagues' reports which he always did with effect. If he had not analysed with so much insight the close relationship which exists in each case between the application of a rule and its political undercurrents, neither his written "observations" nor his oral interventions would have attracted the attention which they increasingly aroused. In fact, one of the most significant remarks which a young Swiss associate of the Institute could have made was to note the considerable esteem in which Huber was held in this association which was as critical as it was famed, an esteem which was not connected with his Swiss nationality, his highly placed social position nor his brilliant career, but purely and solely with his own personality.

One felt that everything which Max Huber undertook occupied him completely as a man. In spite of the diversity of his tireless activity which allowed him to devote only a part of his time to public international law, he succeeded in acquiring a deeper knowledge than many scholars who were specialists in a single branch of learning. He also succeeded in being of service to the

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<sup>1</sup> Study of amendments to the Statutes of the Permanent Court of International Justice, *Annuaire de l'Institut de droit international*, 1954, I, p. 4 et seq. (See Proceedings of the meeting at Aix-en-Provence), *Annuaire de l'Institut de droit international*, 1954, II, p. 61 et seq.

development of the Community of Nations to such an extent that the law of nations will always be proof of this. One can, however, only regret that the cause of humanity, especially on account of his work with the Red Cross, which absorbed the greater part of his time, did not allow him, after he had abandoned his position as a judge, to put into effect a plan which he had had in 1930. After finishing his successful studies in Berlin, he had wanted to write a monograph about the spirit of the Law of Nations based on Rudolph von Jhering's "Spirit of Roman Law". When I visited him for the last time in his home in Zurich at the beginning of December 1959, he still spoke with sorrow at having abandoned this project. Max Huber's exceptional scientific gifts, his intellectual qualities combined with his moral energy would certainly have allowed him to have put this inspiring plan into effect.

Max Huber also knew that the spirit can create far more enduring values than can any institution or official body. And if he held the solution of problems which went beyond the "Jus gentium" closest to his heart, he had reasons for this which went further than rational facts and which in fact fall outside all rules of criticism. Switzerland can be proud of having produced not only Emer de Vattel, Johann Caspar Bluntschli and Alphonse Rivier, but also Max Huber in the first part of the XXth century, a scholar of world repute who had so greatly enriched both the theory and the practice of the law of nations.

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